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Sept 1879
Oct 1 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 103

THE ATLANTIC AND GULF RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED MARCH 27, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 367.

THE ATLANTIC AND GULF RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Atlantic and Gulf Railroad Company, plaintiff in error, and The State of Georgia, defendant in error, wherein was drawn in question the validity of a statute of the State of Georgia, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of such its validity, a manifest error has happened to the great damage of the said The Atlantic and Gulf Railroad Company, as by its complaint appears: we, being willing that error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all thing' concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the seventh day of January, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.]

A. E. BUCK,
Clerk U. S. Circuit Court Northern Dist. of G'a

SUPREME COURT ROOM,
Atlanta, G'a, 8th Jan'ry, 1876.

The above and foregoing writ of error allowed by—

HIRAM WARNER,
Ch. Justice Supreme Court, Geo.

2 (Indorsed:) Supreme Court of the United States. The Atlantic and Gulf Railroad Company, plaintiff in error, versus The State of Georgia, defendant in error. Writ of error to the supreme court of Georgia. Filed in office Jan'y 8, 1876. Z. D. Harrison, cl'k S. C. G'a. R. Falligant, Hartridge & Chisholm.

3 UNITED STATES OF AMERICA, *ss:*

To the State of Georgia, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein the Atlantic and Gulf Railroad Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Hiram Warner, chief justice of the supreme court of Georgia, this the 8th day of Jan'ry, in the year of our Lord one thousand eight hundred and seventy-six.

Z. D. HARRISON,
Cl'k Supreme Court G'a.

4 (Indorsed:) Supreme Court of the United States. Filed in office Jan'y 8, 1876. Z. D. Harrison, cl'k S. C. G'a. The Atlantic and Gulf Railroad Company, plaintiff in error, versus The State of Georgia, defendant in error. Citation.

Due and legal service of the within citation acknowledged, and was waived Jan'y 8th, 1876.

N. J. HAMMOND,
Attorney Gen. of G'a, for Def't in Error.
JAMES M. SMITH,
Gov'r of Geo.

R. FALLIGANT, HARTRIDGE & CHISHOLM.

5 STATE OF GEORGIA, *ss:*

To the honorable Hiram Warner, chief justice of the supreme court of Georgia:

The petition of the Atlantic and Gulf Railroad Company, a corporation existing under the laws of the said State of Georgia, respectfully showeth:

That at the July term, in the year of our Lord one thousand eight hundred and seventy-five, of the said supreme court, there came on to be heard the cause of your petitioner, plaintiff in error, against The State of Georgia, defendant in error.

That said cause had originated in an affidavit filed in behalf of your petitioner, that an execution, which had been issued by the comptroller-general of the State of Georgia against your petitioner for the sum
6 of thirty-two thousand seven hundred and sixty-four dollars and seventy cents, was proceeding illegally in this, that said money was alleged to be due by your petitioner as tax assessed under an act of the legislature of said State of Georgia, bearing date the twenty-eighth day of February, eighteen hundred and seventy-four, entitled "An act to amend the tax laws of this State, so far as the same relate to railroad companies, and to define the liability of said companies to taxation, and to repeal so much of the charters of such companies respectively as may conflict with the provisions of this act," and that the said act, in so far as it attempts to repeal any portion of the charter of your petitioner, or to impose upon the railroad of your petitioner and the appurtenances of the same, another and greater tax than one-half of one per centum on the annual net income of your petitioner, is void and of no effect, inasmuch *as much* as it is an act impairing the
7 obligation of the contract entered into between your petitioner and the State of Georgia, through its charter and the amendments thereof, and is therefore a violation of the first paragraph of the tenth section of the first article of the Constitution of the United States.

That the issue, as made by said affidavit, was tried before his honor the judge of superior court of Fulton County, upon an agreement of facts which was made part of the bill of exceptions to the supreme court of Georgia; which said agreement set forth the extracts from the charters of the railroads forming your petitioner's road, showing the exemption of your petitioner from any other tax than one-half of one per cent. on the annual net income of your petitioner, and other facts therein stated and agreed to, all of which are part of the record of this honorable court, and are specially referred to, and are made part of this petition.

8 That the said judge rendered his decision in favor of the validity of the said statute, as not being repugnant to the said Consti-

tution of the United States; and therefore your petitioner sued out its writ of error to the said decision to the said the supreme court of Georgia, which is the highest court of law and equity in the said State wherein a decision could be had in said cause.

That on the twenty-first day of December, in the year eighteen hundred and seventy-five, the said supreme court of Georgia rendered its decision, affirming the decision of the court below, and sustaining the validity of the said act or statute of the State of Georgia, as not being repugnant to the Constitution and laws of the United States.

Your petitioner further shows your honor that the court was upon the eve of adjournment when the said decision was rendered, and that
9 an order was taken withholding the remittitur in the said case until thirty days from the adjournment of said court, and allowing your petitioner thirty days after said adjournment to sue out its writ of error in the said cause to the Supreme Court of the United States, to obtain the proper citation, and to file the requisite bond.

Your petitioner further shows that it has been greatly damaged by the said decision, and prays your honor to allow it a writ of error to the said the Supreme Court of the United States, and the proper citations thereon, to the end that the error of such decision, if any there has been, may be duly corrected.

R. FALLIGANT,
HARTRIDGE & CHISHOLM,
Attorneys for Plaintiff.

(Indorsed:) Supreme court of Georgia. The Atlantic & Gulf Railroad Company, pl'ff in error, vs. The State of Georgia, d'f't in error. Copy petition for writ of error. Filed in office Jan'y 7th, 1876. Z. D. Harrison, cl'k S. C. G'a. R. Falligant, Hartridge & Chisholm.

10 *The decision of the supreme court of Georgia in the case of the State of Georgia vs. The Atlantic & Gulf Railroad Company.*

Issue on tax execution tried before Fulton superior court and taken by writ of error to the supreme court of Georgia.

The decision of the supreme court of Georgia being against this company,

Be it resolved, That the attorney of this company take steps to have the same reviewed by the Supreme Court of the United States.

Resolved, That the president of this company be, and he is hereby, authorized to sign a bond with his official signature and the seal of this company to bind this company to secure a supersedeas while the said case shall be pending in the Supreme Court of the United States.

I certify that the above is a true extract from the minutes of the board of directors of the Atlantic & Gulf Railroad Company.

D. MACDONALD,
Secretary.

11 UNITED STATES OF AMERICA,
State of Georgia:

Know all men by these presents, that we, the Atlantic & Gulf Railroad Company, principal, & John Screven & Edward Lovell, securities, are held and firmly bound unto the State of Georgia in the full and just sum of sixty-five thousand dollars, to be paid to the said The State of Georgia, or its assigns, to which payment, well & truly to be made and done, we hereby bind ourselves and successors, our heirs, executors, &

administrators, jointly and severally, firmly by these presents, sealed with the corporate seal of the said The Atlantic & Gulf Railroad Company, duly attested, affirmed by authority of a resolution of the board of directors of the company, and the individual seals of the said sureties, & dated this the fourth day of January, in the year of our Lord eighteen hundred and seventy-five.

12 Whereas lately at a term of the supreme court of Georgia, in a suit pending in the said court between the said The Atlantic & Gulf Railroad Company, plaintiff in error, and the said The State of Georgia, defendant in error, judgment was rendered against the said The Atlantic & Gulf Railroad Company, and the said The Atlantic & Gulf Railroad Company having obtained a writ of error to the said Supreme Court, and filed a compy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation issued to the said The State of Georgia citing and admonishing said State to be and appear at a Supreme Court of the United States to be held at Washington on the second Monday in October next:

Now the condition of the above obligation is such that if the said The Atlantic & Gulf Railroad Company shall prosecute said writ of
13 error to effect & answer all damage and costs if it shall fail to make its plea good, then the above obligation to be void, else to remain in full force and virture.

JOHN SCRIVEN,
President Atlantic & Gulf R. Co.
JOHN SCRIVEN. [SEAL.]
EDWARD LOVELL. [SEAL.]

Attest:
D. MACDONALD, *Secretary.*

Signed, sealed, and delivered in presence of—
[SEAL.] JOHN W. BURROUGHS,
Notary Public, Chatham County, Georgia.

Personally appeared before me John Scriven & Edward Lovell, who each for himself makes oath and says that he is the surety on
14 the foregoing & within bond, that his signature thereto is in his own proper handwriting, and that h' is worth the amount of sixty-five thousand dollars over and above his debts, liabilities, and contracts, and the amount of homestead & personalty exemption allowed by law.

JOHN SCRIVEN.
E. LOVELL.

Sworn to & subscribed before me this the fourth day of Jan'y, A. D. 1876, in the county of Chatham, Georgia.
[SEAL.] JOHN W. BURROUGHS,
Notary Public, Chatham County, Georgia.

The above & foregoing bond examined & approved by me this the 8th day of Jan'y, A. D. 1876.

HIRAM WARNER,
C. Justice S. C. Geo.

(Indorsed:) Supreme court of Georgia. The Atlantic & Gulf Railroad Company & John Scriven & Edward Lovell to The State of Georgia. Copy. Bond for supersedeas on writ of error to Supreme Court of

United States. Filed in office Jan'y 8th, 1876. Z. D. Harrison, cl'k, S. C. G'a.

15 GEORGIA, *Fulton County:*

In the supreme court of G'a, July term, 1875.

Be it remembered that during the October term of the superior court of said county of Fulton, for the year 1874, there came on to be tried before the honorable John L. Hopkins, judge of the Atlanta circuit in this State, presiding in said court, the case of The State of Georgia versus The Atlantic and Gulf Railroad Company, upon an issue formed on an affidavit of illegality filed by the defendant to a writ of fieri facias, issued on the 2nd day of October, 1874, by the comptroller-general of the State of Georgia, to enforce the collection of thirty-two thousand seven hundred & sixty-four dollars & seventy cents as an annual tax, for the year 1874, due from said defendant to the State, under an act of the general assembly of the State of Georgia, approved the
16 28th day of February, 1874, and entitled "An act to amend the tax laws of the State, so far as the same relate to railroad companies, and to define the liability of such companies to taxation, and to repeal so much of the charter of such companies as may conflict with the provisions of this act."

The following is a copy of said fi. fa., with the entry of the officer thereon.

STATE OF GEORGIA,
Fulton County:

COMPTROLLER-GENERAL'S OFFICE.

To all and singular the sheriffs and other lawful officers of this State:

You are hereby commanded that of the goods and chattles, lands, tenements, and franchises of the Atlantic and Gulf Railroad Company, a corporation in this State, you cause to be made the sum of thirty-two thousand seven hundred & sixty-four dollars and seventy cents,
17 as its tax for the year 1874, assessed against it upon a return of its taxable property according to law, and costs, and that you pay over said sum of money to the comptroller-general of this State, at his office in Atlanta, Georgia, and return there this fi. fa. with your actings and doings entered thereon.

Witness W. L. Goldsmith, comptroller-general of said State, under the seal of said office, issued this the 2nd day of October, 1874.

W. L. GOLDSMITH,
Comptroller-General of Georgia.

STATE OF GEORGIA,
Chatham County:

SHERIFF'S OFFICE,
October the 6th, 1874.

Under and by virtue of the within tax fi. fa's, I have this day levied on lots numbers 23 & 24, Atlantic ward, city of Savannah, county and State aforesaid, and will sell the said described property on the first Tuesday in November, 1874, before the court-house door, in terms of the law.

The return of—

JOHN T. ROWAN,
Sheriff of C. County.

The following is a copy of the affidavit of illegality:

THE STATE OF GEORGIA
vs.
THE ATLANTIC & GULF RAILROAD COMPANY.

Tax fi. fa. & levy in Chatham County, returnable to Fulton County.

And now comes The Atlantic & Gulf Railroad Company, the defendant in said fi. fa., and saith that the said fi. fa. has been levied on the lots numbers twenty-three (23) and twenty-four (24), Atlantic ward, city of Savannah, the property of this defendant, in the county of Chatham and State of Georgia, and that the said fi. fa. is proceeding illegally, because, this defendant saith:

First. Because said fi. fa. has been levied on the real estate of this defendant, located in said county of Chatham, by the sheriff of said county of Chatham, and that the fi. fa. is made returnable to the
19 superior court of Fulton County for the trial of any affidavit of illegality filed thereto, against which this defendant saith that the superior court of the county of Fulton has no jurisdiction which will authorize it to try an issue formed upon an affidavit of illegality filed to the levy by the sheriff of Chatham County; and this defendant insists that the superior court of said county of Chatham, being a court of general jurisdiction in this State, is the proper court to try said issue of illegality, the more especially as this defendant has no real or personal property, nor any office or place of business or agency in said county of Fulton, but its principal office and place of business is located in the county of Chatham.

This defendant, protesting against the jurisdiction of the superior court of Fulton County to try the issue in the above case, saith:

Secondly. That by the charter of incorporation of this defend-
20 ant, granted Dec. 25th, 1847, it was declared that this defendant was invested with all the rights, privileges, & immunities which by the laws of Georgia are held or enjoyed by any other incorporation, railroad company or companies within this State; that by the 18th section of the act of incorporation of the company now know' as "The Central Railroad and Banking Company of Georgia" (then the Central Railroad & Canal Company), approved Dec. 14th, 1835, it was declared "that the railroad and the appurtenances of the same shall not be subjected to be taxed higher than one-half of one per cent. upon its annual net income"; and, further, that by the act of incorporation of the Atlantic & Gulf Railroad Company of the 27th February, 1856, it was declared that the original Atlantic & Gulf Railroad Company should be entitled to all the privileges, immunities, and exemptions granted to the Central R. R. & Banking Company and the Georgia R. R. &
21 Banking Company, or either of them, by the acts incorporating said two companies; and that one of such exemptions to the said two companies was that said railroads & their appurtenances should not be taxed by the State of Georgia higher than one-half of one per centum upon their annual net income; and, further, that by the consolidating act of the Savannah & Albany R. R. Co. & the Atlantic & Gulf R. R. Co., passed in 1863, the immunities and exemptions of each and both of said companies were reserved to the consolidated company, and one of the immunities reserved to each of said companies before consolidation was that they should not be taxed by the State more than one-half of one per centum upon their annual net income; and, further,

that the stockholders of this defendant subscribed and paid their money for the construction of the road of this defendant and its appur-
22 tenances upon the faith of the terms of the charter granted by the State to this defendant, and that the provisions contained in said charter have never been repealed or changed with the consent of this defendant or its stockholders; that the tax levied upon the property of this defendant is a tax on its railroad and appurtenances, and is in excess of one-half of one per centum of its net income.

And this defendant further saith that during the year 1873 it earned no net income, and that there was no tax levied on this defendant by the tax act of 1873.

Third. That there is no valid law of the State of Georgia under which the tax fi. fa. in the above-mentioned case was issued, and that the act of the legislature of Georgia, approved on the 28th day of February, 1874, entitled "An act to amend the tax laws of this State so far as the same relate to railroad companies, and to define the liability of
23 such companies to taxation, and to repeal so much of the charters of such companies, respectively, as may conflict with the provisions of this act," is void and of no legal effect, in this, that the said act attempts to repeal a material portion of the charter of this defendant, and to impose upon the railroad of this defendant and the appurtenances of the same another and greater tax than one-half of one per centum per annum on the net income of the same, in which the said act is in conflict with the act of incorporation of this defendant, and, further, is in conflict with paragraph 1, section 10, article 1 of the Constitution of the United States, inasmuch as it is an act impairing the obligation of the contract between the State of Georgia and this defendant and its stockholders.

And this defendant further says that this affidavit is not in-
24 terposed for the purpose of delay, but bona fide in defense of the rights of this defendant against the levy of said tax fi. fa.

Personally appeared John Scriven, president of the Atlantic and Gulf Railroad Company, the above named defendant, who, being duly sworn, deposes & says that the facts contained in the above affidavit are true.

JOHN SCRIVEN,
President of the Atlantic & Gulf R. R. Co., the above-named Defendant.

Subscribed & sworn to before me this 2nd day of November, 1874.

J. J. ABRAMS,
Justice of the Peace, Chatham County, Georgia.

The trial of this case came on under an agreement of counsel, of which the following is a copy:

In Fulton superior court, State of Georgia.

12 STATE OF GEORGIA
vs.
THE ATLANTIC & GULF R. R. CO.

Tax fi. fa. levied & aff't of illegality & bond filed by defendant.

Upon the trial of the above case the following facts were agreed upon by counsel of pl'ff & d'f't as the facts to be presented on the issue between the parties:

1st. That the Savannah and Albany Railroad Company was incorporated by an act of the legislature of Georgia on the 25th day of December, 1847, and that by the 1st section of said act of incorporation the said railroad company was invested with all the rights, privileges, & immunities which by the laws of Georgia were held or enjoyed by any incorporated railroad company or companies. (See pamp. laws of Ga., 1847, p. 191.)

2nd. That the Atlantic & Gulf Railroad Company was incor-
26 porated by an act of the legislature of Georgia, approved on the 27th day of February, 1856, by the 4th section of which act it was declared that all the privileges, immunities, & exemptions granted to the Central Railroad & Banking Company & the Georgia Railroad & Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof, were granted to the Atlantic & Gulf Railroad Company. (See acts, pamp., 1856, p. 160.)

3rd. That the said two railroad companies, under their respective acts of incorporation, constructed their several lines prior to 1860.

4th. That on the 18th day of April, 1863, the legislature of Georgia passed an act authorizing the consolidation of the stocks of the
27 Savannah, Albany & Gulf Railroad Company & the Atlantic & Gulf Railroad Company, which was to be ratified by a majority of stockholders of said two companies, and by the 3rd section of which act it was declared "that the several immunities, franchises, and privileges granted to the said Savannah, Albany & Gulf Railroad Company and the Atlantic & Gulf Railroad Company by their original charters, and the amendments thereof, and the liabilities therein imposed, shall continue in force, except so far as they may be inconsistent with this act of consolidation." (See pamp. laws, 1863, p. 223.)

5th. That for years before, & at the time of the passage of the act of consolidation of said two companies, in April, 1863, the State of Georgia was a stockholder in said original Atlantic and Gulf Railroad Co. to the extent of one million dollars, and that in June, 1863, the
28 State of Georgia voted for said consolidation, casting therefor ten thousand votes, that being the number of shares then held by the State.

6th. That the State of Georgia is now, and was at the time of the levy of said tax fi. fa., a stockholder in said consolidated company to amount of one million dollars, representing ten thousand shares of the stock of said consolidated company.

7th. That there has been no act of the legislature of Georgia since April, 1863, affecting said companies as consolidated.

8th. That the defendant made or received no net income in the year 1873.

9th. It is also agreed that the affidavit may be amended without being resworn to, & that either party may use any & all parts of the
29 charters of said companies & amendments of the same before Judge Hopkins, and it is agreed to submit the question to him at once for decision, without the intervention of a jury, subject to review by either side by supreme court upon legal arguments heretofore presented to the court in other R. R. cases, to wit, C. R. R. & B'nk'g Co., G'a R. R. and B'nk'ng Co., except the argument upon the plea to the jurisdiction, which arguments make part of the issues made in this case, and further arguments to be advanced by defendant.

This Dec. 1st, 1874.

N. J. HAMMOND, *Att'y Gen'l.*
LOVELL & FALLIGANT, *Def'ts Att'ys.*

The following are copies of such portions of the charters of the Central Railroad & Banking of Georgia, & the Georgia Railroad & Banking Company of G'a, and the Savannah, Albany & Gulf Railroad
30 Company of G'a, and the Atlantic and Gulf Railroad Company of G'a, and of the act of the 18th of April, 1863, consolidating the latter two.

By the 7th section of the act of December the 20th, 1833, incorporating the Central Railroad & Canal Company of Ga., it was declared by the legislature of Ga., and affirmed by the act of the legislature of Ga. of Dec. 14th, 1835, 18th section, that "the said canal or railway, & the appurtenances of the same, shall not be subjected to be taxed higher than one-half per cent. upon its annual net income."

That by the 15th section of the act of the legislature of the State of Ga., approved Dec. 21st, 1833, incorporating the Georgia Railroad Company, it was declared that "the stock of the said company & its branches shall be exempt from taxation for and during the term of 7 years from and after the completion of the said railroad, or any
31 one of them, and after that shall be subject to a tax not exceeding one-half per cent. per annum on the net proceeds of their investments."

And further, that by the first section of an act of the legislature of the State of Ga., approved December 25th, 1847, incorporating the Savannah and Albany Railroad Co., it was declared "that the said the Savannah and Albany R. R. Co. should be invested with all the rights, privileges & immunities which by the laws of Ga. are held or enjoyed by any other incorporated railroad company or companies, subject to the restrictions connected with and necessarily consequent upon such rights, privileges, & immunities for the purposes hereafter specified."

And further, that by the act of the legislature of Ga., approved February 27th, 1856, incorporating the Atlantic & Gulf R. R. Co., it was, by the 4th section of said act, declared by the legislature of Ga. that
32 "all the privileges, immunities, & exemptions granted to the Central Railroad & Banking Company & the Georgia Railroad & Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof, are hereby granted to the said Atlantic & Gulf Railroad Company so far as the same can be made applicable to said Atlantic & Gulf Railroad Company."

And further that an act of the legislature of Ga., passed on the 18th day of April, 1863, the said Atlantic & Gulf Railroad Co. and the said Savannah, Albany & Gulf R. R. Co., were authorized to consolidate the said two companies into one. The first section of which act is as follows:

"Be it enacted by the senate and house of representatives of the State of Ga., That the Savannah, Albany & Gulf R. R. Co. & the Atlantic & Gulf R. R. Co., be, and they are hereby, authorized & empowered
33 to consolidate as may be agreed upon by the directors of said R. R. companies & ratified by a majority of the stockholders thereof, and the said R. R. companies when so consolidated shall be known as 'The Atlantic & Gulf Rail Road Company'; provided that nothing herein contained shall relieve or discharge either of said companies from any contract heretofore entered into by either, but this company shall be liable on the same."

And that by the 3rd section of the same act, passed April 18th, 1863, it was by the legislature of Ga. declared "That the several immunities, franchises, and privileges granted to the said Savannah, Albany & Gulf R. R. Co., and the Atlantic & Gulf R. R. Co., by their original charters

1st. That the Savannah and Albany Railroad Company was incorporated by an act of the legislature of Georgia on the 25th day of December, 1847, and that by the 1st section of said act of incorporation the said railroad company was invested with all the rights, privileges, & immunities which by the laws of Georgia were held or enjoyed by any incorporated railroad company or companies. (See pamp. laws of Ga., 1847, p. 191.)

2nd. That the Atlantic & Gulf Railroad Company was incor-
26 porated by an act of the legislature of Georgia, approved on the 27th day of February, 1856, by the 4th section of which act it was declared that all the privileges, immunities, & exemptions granted to the Central Railroad & Banking Company & the Georgia Railroad & Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof, were granted to the Atlantic & Gulf Railroad Company. (See acts, pamp., 1856, p. 160.)

3rd. That the said two railroad companies, under their respective acts of incorporation, constructed their several lines prior to 1860.

4th. That on the 18th day of April, 1863, the legislature of Georgia passed an act authorizing the consolidation of the stocks of the
27 Savannah, Albany & Gulf Railroad Company & the Atlantic & Gulf Railroad Company, which was to be ratified by a majority of stockholders of said two companies, and by the 3rd section of which act it was declared "that the several immunities, franchises, and privileges granted to the said Savannah, Albany & Gulf Railroad Company and the Atlantic & Gulf Railroad Company by their original charters, and the amendments thereof, and the liabilities therein imposed, shall continue in force, except so far as they may be inconsistent with this act of consolidation." (See pamp. laws, 1863, p. 223.)

5th. That for years before, & at the time of the passage of the act of consolidation of said two companies, in April, 1863, the State of Georgia was a stockholder in said original Atlantic and Gulf Railroad Co. to the extent of one million dollars, and that in June, 1863, the
28 State of Georgia voted for said consolidation, casting therefor ten thousand votes, that being the number of shares then held by the State.

6th. That the State of Georgia is now, and was at the time of the levy of said tax fi. fa., a stockholder in said consolidated company to amount of one million dollars, representing ten thousand shares of the stock of said consolidated company.

7th. That there has been no act of the legislature of Georgia since April, 1863, affecting said companies as consolidated.

8th. That the defendant made or received no net income in the year 1873.

9th. It is also agreed that the affidavit may be amended without being resworn to, & that either party may use any & all parts of the
29 charters of said companies & amendments of the same before Judge Hopkins, and it is agreed to submit the question to him at once for decision, without the intervention of a jury, subject to review by either side by supreme court upon legal arguments heretofore presented to the court in other R. R. cases, to wit, C. R. R. & B'nk'g Co., G'a R. R. and B'nk'ng Co., except the argument upon the plea to the jurisdiction, which arguments make part of the issues made in this case, and further arguments to be advanced by defendant.

This Dec. 1st, 1874.

N. J. HAMMOND, *Att'y Gen'l.*
LOVELL & FALLIGANT, *Def'ts Att'ys.*

The following are copies of such portions of the charters of the Central Railroad & Banking of Georgia, & the Georgia Railroad & Banking Company of G'a, and the Savannah, Albany & Gulf Railroad
30 Company of G'a, and the Atlantic and Gulf Railroad Company of G'a, and of the act of the 18th of April, 1863, consolidating the latter two.

By the 7th section of the act of December the 20th, 1833, incorporating the Central Railroad & Canal Company of Ga., it was declared by the legislature of Ga., and affirmed by the act of the legislature of Ga. of Dec. 14th, 1835, 18th section, that "the said canal or railway, & the appurtenances of the same, shall not be subjected to be taxed higher than one-half per cent. upon its annual net income."

That by the 15th section of the act of the legislature of the State of Ga., approved Dec. 21st, 1833, incorporating the Georgia Railroad Company, it was declared that "the stock of the said company & its branches shall be exempt from taxation for and during the term of 7 years from and after the completion of the said railroad, or any
31 one of them, and after that shall be subject to a tax not exceeding one-half per cent. per annum on the net proceeds of their investments."

And further, that by the first section of an act of the legislature of the State of Ga., approved December 25th, 1847, incorporating the Savannah and Albany Railroad Co., it was declared "that the said the Savannah and Albany R. R. Co. should be invested with all the rights, privileges & immunities which by the laws of Ga. are held or enjoyed by any other incorporated railroad company or companies, subject to the restrictions connected with and necessarily consequent upon such rights, privileges, & immunities for the purposes hereafter specified."

And further, that by the act of the legislature of Ga., approved February 27th, 1856, incorporating the Atlantic & Gulf R. R. Co., it was, by the 4th section of said act, declared by the legislature of Ga. that
32 "all the privileges, immunities, & exemptions granted to the Central Railroad & Banking Company & the Georgia Railroad & Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof, are hereby granted to the said Atlantic & Gulf Railroad Company so far as the same can be made applicable to said Atlantic & Gulf Railroad Company."

And further that an act of the legislature of Ga., passed on the 18th day of April, 1863, the said Atlantic & Gulf Railroad Co. and the said Savannah, Albany & Gulf R. R. Co., were authorized to consolidate the said two companies into one. The first section of which act is as follows:

"Be it enacted by the senate and house of representatives of the State of Ga., That the Savannah, Albany & Gulf R. R. Co. & the Atlantic & Gulf R. R. Co., be, and they are hereby, authorized & empowered
33 to consolidate as may be agreed upon by the directors of said R. R. companies & ratified by a majority of the stockholders thereof, and the said R. R. companies when so consolidated shall be known as 'The Atlantic & Gulf Rail Road Company'; provided that nothing herein contained shall relieve or discharge either of said companies from any contract heretofore entered into by either, but this company shall be liable on the same."

And that by the 3rd section of the same act, passed April 18th, 1863, it was by the legislature of Ga. declared "That the several immunities, franchises, and privileges granted to the said Savannah, Albany & Gulf R. R. Co., and the Atlantic & Gulf R. R. Co., by their original charters

and the amendments thereof, and the liabilities therein imposed, shall continue in force, except so far as they may be inconsistent with this act of consolidation."

34 Upon the submission & hearing of said cause, the presiding judge overruled the affidavit of illegality filed therein by the defendant, & passed the following order:

Upon considering this case, ordered that the fi. fa. proceed, and that said defendant pay dollars costs.
This 23rd Dec., 1874.

To which order and judgment of the said court the defendant now here during the session of said court excepts & assigns the following grounds of error:

1st. That the judge of the superior court of Fulton County had no jurisdiction upon the trial of a case upon the affidavit of illegality levied by the sheriff of Chatham County upon real estate in Chatham County, when the defendant in execution had no property, representative, or place of business in Fulton County.

35 2. That the decision of the judge in sustaining such tax fi. fa. is contrary to law.

3d. That the order of the said judge in overruling said affidavit of illegality & ordering said tax fi. fa. to proceed was contrary to law and the Constitution of the United States in this, that it impairs the obligation of a contract made between plaintiff & defendant.

And now, during the session of said court, the said defendant tenders this his bill of exceptions, & prays that the same may be certified according to law.
February 8th, 1875.

LOVELL & FALLIGANT,
For Pl'ff in Error.

I do certify that the foregoing bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of, and the clerk of the superior court of Fulton County

36 is hereby required and ordered to make out a complete copy of the record in said cause, and certify the same to be a true and complete copy, & cause the same to be transmitted to the next July term of the Supreme Court, that the errors alledged to have been committed may be considered and corrected.
February 8th, 1875.

JNO. L. HOPKINS,
Judge Sup'r Court, Atlanta Circuit.

GEORGIA,
Fulton County:

I, Ja's D. Collins, clerk of the superior court in and for said county, do certify that above & foregoing is the true original bill of exceptions in case of Atlantic & Gulf R. R. Co. vs. State of G'a, as appears of file, and that said court adjourned on 15th inst.
Given under my hand and seal of office this Feb'y 23rd, 1875.
[SEAL.] JA'S D. COLLINS, *Clerk.*

Service acknowledged & copy waived this 10th Feb'y, 1875.
N. J. HAMMOND,
Att'y Gen'l.

(Indorsed:) No. 6. Atlanta. Supreme court of Georgia. July term, 1875. The Atlantic & Gulf Railroad Co., pl'ff in error, vs. The State of Georgia, d'f't in error. Filed in office Feb'y 24th, 1875. Z. D. Harrison, p'r T. Copy bill of exceptions. Original filed in office Feb'y 22d, 1875. J. D. Collins, cl'rk. Lovell & Falligant, att'ys for pl'ffs in error.

37 Supreme court of Georgia.

TUESDAY, *Dec.* 21, 1875.

The honorable supreme court met pursuant to adjournment. Present, their honors Hiram Warner, chief justice, and L. E. Bleckley and James Jackson, judges.

The following judgment was rendered:

THE ATLANTIC & GULF RAILROAD COMPANY, pl'ff in error,
vs.
THE STATE OF G'A, DEF'T IN ERROR.

This case came before the court upon a transcript of the record from the superior court of Fulton County, and, after argument had, it is considered and adjudged by the court that the judgment of the court below be affirmed.

38 STATE OF GEORGIA,
Fulton County:

COMPTROLLER-GENERAL'S OFFICE.

To all and singular the sheriffs and other lawful officers of the State:

You are hereby commanded that of the goods & chattels, lands & tenements & franchises of The Atlantic & Gulf Railroad Company, a corporation in this State, you cause to be made the sum of thirty-two thousand seven hundred and sixty-four $\frac{70}{100}$ dollars, as its tax for the year 1874, assessed against it upon a return of its taxable property according to law, and that you pay over said sum of money to the comptroller-general of said State at his office, in Atlanta, Georgia, and return thereto this fi. fa., with your actings & doings entered thereon.

Witness, W. L. Goldsmith, comptroller-general of said State, under the seal of said office.

Issued this the 2d day of October, 1874.

W. L. GOLDSMITH,
Comptroller-General of Georgia.

39 STATE OF GEORGIA,
Chatham County:

SHERIFF'S OFFICE, *October 6th*, 1874.

Under and by virtue of the within tax fi. fa., I have this day levied on lots numbers 23 and 24, Atlantic ward, city of Savannah, county and State aforesaid, and will sell the said described property on the first Tuesday in November, 1874, before the court-house door in terms of the law.

The return of—

JOHN T. ROUAN,
Sh'ff C. Co.

Affidavit of illegality.

STATE OF GEORGIA
vs.
THE ATLA'TIC & GULF RAILROAD COMPANY.

Tax fi. fa. & levy in Chatham Co. returnable to Fulton County.

And now comes The Atlantic & Gulf Railroad Company, the defendant in said fi. fa., and saith that the said fi. fa. hath been levied on the lots numbers twenty-three (23) & twenty-four (24), Atlantic ward, city of Savannah, the property of this defendant in the county of
40 Chatham & State of Georgia, and that the said fi. fa. is proceeding illegally, because the defendant saith:

First. Because said fi. fa. has been levied on the real estate of this defendant located in said county of Chatham by the sheriff of said county of Chatham, & that the fi. fa. is made returnable to the superior court of Fulton County, for the trial of any affidavit of illegality filed thereto, against which this defendant saith the superior court of Fulton County has no jurisdiction which will authorize it to try an issue upon an affidavit of illegality filed to the levy by the sheriff of Chatham County, upon real estate located in Chatham County, and this defendant insists that the superior court of said county of Chatham, being a court of general jurisdiction in this State, is the proper court to try said issue of illegality, the more especially as this defend-
41 ant has no real or personal property, nor any office or place of business or agency in said county of Fulton, but its principal office and place of business is located in said county of Chatham.

This defendant protesting against the jurisdiction of the superior court of Fulton County to try the issue in the above case, saith,

Secondly. That by the charter of incorporation of this defendant granted December 25th, 1847, it was declared that this defendant was invested with all the rights, privileges, and immunities which by the laws of Georgia are held or enjoyed by any other incorporated railroad company or companies within the State; that by the 18th section of the act of incorporation of the company now known as the Central Railroad & Banking Company of Georgia (then the Central Railroad &
42 Canal Company), approved December 14th, 1835, it was declared that "the railroad and the appurtenances of the same shall not be subjected to be taxed higher than one-half one per centum upon its annual net income," and further that by the act of incorporation of the Atlantic & Gulf R. R. Company of the 27th of February, 1856, it was declared that the original Atlantic & Gulf R. R. Company should be entitled to all the privileges, immunities, & exemptions granted to the Central Railroad & Banking Company, and the Georgia Railroad and Banking Company, or either of them, by the acts incorporating said two companies, & that one of the exemptions to the said two companies was that the said railroads and their appurtenances should not be taxed by the State of Georgia higher than one-half of one per centum upon their annual net income.

43 And, further, that by the consolidating act of the Savannah & Albany R. R. Company and the original Atlantic & Gulf R. R. Company, passed in 1863, the immunities & exemptions of each & both of said companies were reserved to the consolidated company; and one of the immunities and exemptions reserved to each of said companies before consolidation was that they should not be taxed by the State

more than one-half of one per centum upon their annual net income, and that the stockholders of this defendant subscribed and paid their money for the construction of the road of the defendant, and its appurtenances, upon the faith of the terms of the charter granted by the State to this defendant, and that the provisions contained in said charter have never been repealed or changed with the consent of this defendant or its stockholders; that the tax levied upon the property of
44 this defendant is a tax on its railroad and appurtenances, and is in excess of one-half of one per centum of its net income.

And this defendant further saith, during the year 1873 it earned no net income, & that there was no tax levied on this defendant by the tax act of 1873.

Third. That there is no valid law of the State of Georgia under which the tax fi. fa. in the above-mentioned case was issued; and that the act of the legislature of G'a, approved on the 28th day of February, 1874, entitled "An act to amend the tax-laws of this State, so far as the same relate to railroad companies, & to define the liability of such companies to taxation, and to repeal so much of the charter of such companies, respectively, as may conflict with the provisions of this act," is void and of no legal effect, in this, that the said act attempts to repeal
45 a material portion of the charter of this defendant, and to impose upon the railroad of this defendant, and the appurtenances of the same, another & a greater tax than one-half of one per centum per annum on the net income of the same, in which the said act is in conflict with the act of incorporation of this defendant; and, further, is in conflict with paragraph 1, section 10, article 1 of the Constitution of the United States, inasmuch as it is an act impairing the obligation of the contract between the State of Georgia and this defendant and its stockholders.

And this defendant further says that this affidavit is not interposed for the purpose of delay, but bona fide in defense of the rights of this defendant against the levy of said tax fi. fa.

Personally appeared John Screven, president of the Atlantic and Gulf Railroad Company, the above-named defendant, who, being
46 duly sworn, deposes and says that the facts stated in the above affidavit are true.

JOHN SCREVEN,
President of the Atlantic & Gulf R. R. Co.,
the above-named defendant.

Sworn to & subscribed before me this second day of November, 1874.
J. J. ABRAMS,
Justice of the Peace, Chatham County, Georgia.

Filed in office Nov. 30th, 1874.
J. D. COLLINS, *C. F. C.*

In Fulton superior court, State of Georgia.

Tax fi. fa., levy & aff'a't of illegality & bond filed by d'f't.

STATE OF GEORGIA
vs.
THE ATLANTIC & GULF R. R. Co.

Upon the trial of the above cause, the following facts are agreed upon by counsel of plaintiff & defendant as the facts to be presented on the issue between the parties:

1st. That the Savannah and Albany Railroad Company was incorporated by an act of the legislature of Georgia on the 25th day of December, 1847, and that by the first section of said act of incorpo-
47 ration the said railroad company was invested with all the rights, privileges, & immunities which, by the laws of Georgia, were held or enjoyed by any other incorporated railroad company or companies. (See Pamphlet Laws of Ga., 1847, p. 191.)

2d. That the Atlantic & Gulf Railroad Company was incorporated by an act of the legislature of Georgia, approved on the 27th day of February, 1856; by the fourth section of which act it was declared that all the privileges, immunities, & exemptions granted to the Central Railroad & Banking Company, & the Georgia Railroad & Banking Company, or either of them, by the acts incorporating said companies, and the several acts amendatory thereof, were granted to the Atlantic & Gulf Railroad Company. (See acts P. M. P., 1856, p. 160.)

3d. That the said two railroad companies, under their respective acts of incorporation, constructed their several lines prior to 1860.

48 4th. That on the 18th day of April, 1863, the legislature of Georgia passed an act authorizing the consolidation of the stocks of the Savannah, Albany & Gulf Railroad Company & the Atlantic & Gulf Railroad Company, which act was to be ratified by a majority of the stockholders of the said two companies, & by the third section of which act it was declared "that the several immunities, franchises, & privileges granted to the said Savannah, Albany & Gulf Railroad Company and the Atlantic and Gulf Railroad Company by their original charter, and the amendments thereof, & the liabilities therein imposed shall continue in force, except so far as they may be inconsistant with this act of consolidation." (See Pam. Laws, 1863, p. 223.)

5th. That for years before, and at the time of, the passage of the
49 act of consolidation of said two companies in April, 1863, the State of Georgia was a stockholder in said original Atlantic & Gulf Railroad Company to the extent of one million of dollars, and that in June, 1863, the State of Georgia voted for said consolidation, casting therefor ten thousand votes, that being the number of shares then held by the State.

6th. That the *the* State of Georgia is now and was at the time of the levy of said tax fi. fa., a stockholder in said consolidated company to the amount of one million of dollars, representing ten thousand shares of the stock of said consolidated company.

7th. That there has been no act of the legislature of Georgia since April, 1863, affecting said companies as consolidated.

8th. That the defendant made or received no net income in the year 1873.

50 9th. It is agreed also that the affidavit may be amended without being resworn to, & that either party may use any and all parts of the charter of said companies and amendments of the same before Judge Hopkins, and it is agreed to submit the question to him for decision at once without the intervention of a jury, subject to review by either side by Supreme Court, upon legal arguments heretofore presented to the court, in other R. R. cases, to wit, C. R. R. & B'k'ng Co. & G'a R. R. & B'nk'g Co., except the arguments upon the plea to jurisdiction, which arguments make part of the issue made in this case, & further arguments to be advanced by d'f't.

N. J. HAMMOND, *Att'y Gen'l.*
LOVELL & FALLIGANT,
D'f't's Att'ys.

Upon considering this case, ordered that the fi. fa. proceed and that said defendant pay dollars costs.

N. J. HAMMOND,
Att'y Gen'l.

This 23rd December, 1874.

51 GEORGIA,
Fulton County:

I, Ja's D. Collins, clerk of superior court in and for said county, do certify that the within & foregoing is a true & complete transcript of the record in the case of Atlantic & Gulf R. R. Co. vs. State, and that said court adjourned on the 15th inst.

Given under my hand and seal of office February 23rd, 1875.

JA'S D. COLLINS, *Clk.*

(Indorsed:) No. 6. Atlanta. Supreme court of G'a, Atlanta circuit. The Atlantic & Gulf Railroad Co., pl'ff in error, vs. The State of Georgia, def't in error. Record. Filed in office Feb'y 24, 1875. Z. D. Harrison. Lovell & Falligant.

52 *Opinion supreme court of G'a. July term*, 1875.

ATLANTIC & GULF R. R. COMPANY
vs.
THE STATE OF GEORGIA.

WARNER, C. J., delivering opinion:

This case came before the court below on an affidavit of illegality filed by the defendant to a tax execution issued by the comptroller-general of the State, which had been levied on the defendant's property. The tax execution was issued in pursuance of an act of the general assembly of this State, approved on the 24th day of February, 1874, entitled "An act to amend the tax laws of this State so far as the same relate to railroad companies, and to define the liabilities of such companies to
53 taxation, and to repeal so much of the charters of such companies, respectively, as may conflict with the provisions of this act." The defendant insisted in its affidavit of illegality that, neither by the terms of the original charters granted by the general assembly to the Savannah & Albany Railroad Company, 1874, and to the Atlantic & Gulf Railroad Company in 1856, consolidating the aforesaid two companies, was it liable to be taxed higher than one half of one per cent. on its annual net income, and that the act of the 28th of February, 1874, in so far as it authorized the levy & collection of a higher tax on the property of defendant than one-half of one per cent. on its annual net income was in violation of the 10th section of the 1st article of the Constitution of the United States and therefore void.

54 The court overruled the defendant's affidavit of illegality, and the defendant excepted. The main questions made by the record in this case were involved & decided by this court in the case of the Central Railroad and Banking Company and the Southwestern Railroad Company vs. The State, decided at the last term (not yet reported) and are controlled by it. (See pamphlet decisions, 99.)

Let the judgment of the court below be affirmed.

55 *Opinion supreme court of G'a. January term*, 1875.

CENTRAL R. R. & BANKING CO.
vs.
THE STATE OF GEORGIA.

SOUTHWESTERN R. R. CO.
vs.
THE STATE OF GEORGIA.

THE STATE OF GEORGIA
vs.
SAVANNAH & AUGUSTA R. R. CO.

WARREN, C. J., delivering opinion:

On the 28th of February, 1874, the general assembly of the State of Georgia passed an act to amend the tax laws of the State, so far as the same related to the railroad companies, and to define the liability of such companies to taxation, and to repeal so much of the charters
56 of such companies respectively as might conflict with the provisions of that act.

The act requires the presidents of all the railroad companies in the State to return on oath annually to the comptroller-general the value of the property of their respective companies, without deducting their indebtedness, to be taxed as other property of the people of the State, and provides for the collection of the same. The 4th section of the act repeals all conflicting laws. In accordance with the provisions of the above-recited act, the comptroller-general of the State issued executions against the Central Railroad & Banking Company of Georgia, the Southwestern Railroad Company, and the Augusta & Savannah Railroad Company, for the collection of the tax claimed to be due to the State by each company respectively. The companies filed affidavits of illegality to the executions, as provided by the act of 1874, and on the hear-
57 ing thereof in the court below the court overruled the grounds taken in the affidavit of illegality by the Central Railroad & Banking Co. and the Southwestern Railroad Company. Whereupon the defendants excepted, and allege the same as error. The court sustained the affidavit of illegality made by the Augusta & Savannah Railroad Company, whereupon the State excepted, and assigned the same as error. The three cases were argued together here.

It is insisted by the plaintiff in error in the two first-named cases that the act of 1874 is unconstitutional and void, because it impairs the obligation of the contract made by the respective companies with the State under the respective charters thereof, with the true intent and meaning of the 10th section of the 1st article of the Constitution of the United States. By the original charter of the Central Railroad & Bank-
58 ing Company, granted to it in 1835, it is provided "that said railroad, and the appurtenances of the same, shall not be subject to be taxed higher than one half of one per centum upon its annual net income." If the defendants were now before the court under the original charters as granted by the State, and as then accepted by each company, that would have been an executed contract between the State and the respective companies, and the State, as the law then stood, could not have impaired the obligation thereof by the passage of the act 1874.

But do the defendants now stand before the court as they would have

stood under the law as it existed at the time of the granting & acceptance of the original charters? Have the two companies accepted new charters under grants from the State, under a new & different law than that which existed in the State at the time the original charters
59 were granted and accepted? If the two companies have obtained new charters and new grants from the State since the enactment of such new law, and accepted the same, then that new law of the State entered into & formed an essential element of the contract between the State and the two companies.

By the general law of this State, as declared on the 1st of January, 1863 (that being the time the code took effect as the law of the State), corporations are either public or private. A public corporation is one having for its object the administration of a portion of the powers of government delegated to it for that purpose. Such are municipal corporations. All others are private, whether the object of incorporation be for public convenience or individual profit, and whether the purpose be in its nature civil, religious, or educational. In all cases of private charters hereafter granted the State reserves the right to with-
60 draw the franchise unles' such right is expressly negatived in the charter. Private corporations hereafter created, without the reservation of the right of dissolution, and where individual rights have become vested, are not subject to dissolution at the will of the State. (New Code, sections 1672, 1673, 1642, 1643.)

Should any charter granted in future by the general assembly to a private corporation be silent as to its continuance, such charter shall expire at the end of thirty years from the date of its grant. (Code 1839.) In the case of West End and Atlanta Street Railroad Company vs. The Atlanta Street Railroad Company, 49th Geo. Rep., 151, this court, in giving an interpretation to the 1642d section of the code, held that the power reserved by the State to withdraw the entire franchise necessarily included the power to modify or restrict the exercise of it. This
61 court also held in that case that this section of the code introduced a new element into the law of private corporations in this State, and that all charters granted by the State to private corporations since its adoption are subject to its provisions, and that the acceptance by the company of the grant made by the general assembly must be understood as having done so with a full knowledge of this general law, as much so as if it had been inserted in the act of incorporation, for it is a well established rule that the laws which exist at the time and place of the making of a contract applicable thereto, enter into and form a part of it.

In August, 1872, the general assembly of the State passed an act to authorize and provide for the union and consolidation of the Macon & Western Railroad Company with the Central Railroad & Bank-
62 ing Company of Georgia under the name and charter of the latter company. By this act the two companies were authorized and empowered to unite & consolidate the stock of said two companies, and all the rights, privileges, immunities, property, and franchises belonging or attaching to said companies, under the name and charter of the said Central Railroad & Banking Company of Georgia, in such manner that each and every owner & holder of shares of the capital stock of the Macon & Western Railroad Company shall be entitled to & receive an equal number of shares of the capital stock of the consolidated company.

The act further provides that neither company should be discharged from any contract previously entered into, but all such contracts shall

be assumed by and be binding on the Central R. R. & Banking
63 Company of Georgia; and all benefits and rights under the same shall accrue to and vest in the said last-mentioned company; and that the capital stock of the Central R. R. and Banking Company of Georgia shall not exceed the amount of the authorized capital thereof and the present authorized capital of the Macon & Western Railroad Company added thereto.

The 2nd section of the act provides for the assent of the stockholders of each company to the consolidation.

The 3d section provides for notification to the governor of the consolidation of the two companies under the act.

The 4th section provides that each stockholder in the Macon & Western Railroad Company shall be entitled to receive a certificate of stock as a stockholder in the Central Railroad & Banking Company of Georgia for a like number of shares upon the surrender of his certificate of
64 stock in the former company, which new certificate shall entitle the holder thereof to the rights, privileges, and benefits as attach to the holders of stock now held by the shareholders in said companies or either of them.

The 5th section repeals all conflicting laws.

Was this an act of incorporation, as defined by the common law and by our own code? A corporation, as defined by the ancient common law, is a franchise created by the king, and is a body constituted by policy, with a capacity to take or to do (4th Comyn's Digest, top page, 465, title corporation). There need not be any precise words to make a corporation. Anciently, if the king had granted to a vill. gildam mercatoriam, it was, by such grant, incorporated (fourth Comyn's Digest, top page, 470. See also 2nd Kent's Com., 307; Denton vs. Jackson, 2nd John. Chancery Reports, 324). One corporation may be
65 made out of another corporation (6th Viner's Ab., 260).

A corporation, as defined by our code, is an artificial person, created by law for specific purposes, the limit of whose existence, powers, and liabilities, is fixed by the act of incorporation, usually called its charter (new code, 1870). The specific purposes for which this charter was granted by the State, is manifested by the terms of the charter. The State created by law this corporation, and granted to it the right & privilege to unite and consolidate the stocks of the two companies, and all the rights, privileges, immunities, property, and franchises belonging or attaching to said companies, under the name and charter of said Central Railroad & Banking Company of Georgia, in such manner as is specified therein. In other words, the State granted to this
66 corporation all the rights, privileges, &c., which belonged to either company under the name & charter of the Central Railroad & Banking Company, and the new consolidated company was to have the same rights, privileges, and immunities as the Central Railroad and Banking Company had under its charter.

Instead of specifying in the new act of consolidation what the rights, privileges, and immunities of the Central Railroad & Banking Company, reference must now be had to its original charter to ascertain them. The fact that the consolidation act of incorporation confers upon the new company the same rights, privileges, & immunities as were conferred upon the Central Railroad & Banking Co., has no more legal significance than if the words of its original charter had been incorporated into the new consolidated act.

Under the new consolidated act of incorporation, the company
67 has conferred upon it, by the grant from the State, all the rights,

privileges, & immunities which were conferred by the original charter of the Central Railroad & Banking Company; and in order to ascertain what those rights, privileges, & immunities are, we must look to that original charter, inasmuch as the same are not specified in the new consolidated act of incorporation, but that does not prove that the act of August, 1872, was not a legal act of incorporation by the general assembly of the State.

There are many acts of incorporation in this State which refer to the charters of other incorporated companies, as to the powers, privileges, immunities, and franchises granted by the general assembly, but it has never been doubted that such acts were valid acts of incorpora-
68 tion. The contract between the State & the Central Railroad and Banking Company, under the act of August, 1872, is not the same contract as that made with it by the State in 1835. That company a'quired new rights and other privileges under the act of 1872, in addition to those granted to it in 1835. It is true that in addition to the rights & privileges granted by the act of 1872, the general assembly also granted to the new company by that act all the rights, privileges, immunities, property, & franchises belonging or attaching to the Central Railroad & Banking Company as specified in its charter of 1835, but the acceptance of the grants contained in the act of 1872, by the company, was a new contract with the State.

There was a new consideration obtained by the company under
69 the charter of 1872, which did not exist under the charter of 1835, and there was a new party introduced by the charter of 1872, and consolidated with the company (to wit), the Macon & Western Railroad Company, and the acceptance of the charter of 1872 by the company upon a new consideration and with a new party consolidated into the company, was such a novation of the original contract under the old charter as put an end to it and created a new company under the charter of 1872, which under the general laws of the State will not expire until thirty years from the date of the charter. (See new code, 2724, as to novation of contract.)

If, however, the general assembly of the State, by the act of 1872 had done nothing more than simply renewed the charter of the company, granted to it in 1835, with all its rights, privileges, immunities,
70 and franchises as therein specified, and the company had accepted the same, would it not have been accepted in view of the general law of the State, as declared by the code of 1863?

But the act of 1872 does much more than that, as will readily be perceived by referring to its provisions. The main point in the case is whether the grant of exemption from taxation, as specified in the charter of 1835, and referred to in the act of 1872, as one of the privileges and immunities granted to the company, is such an executed contract between the State and the company, the obligation of which the State cannot impair by withdrawing the franchise granted by the general law of the State, at the time the charter of Aug., 1872, was granted by the general assembly, consolidated the two companies, and at the time of its acceptance the State had reserved the right, by her public law,
71 to withdraw the franchise granted, unless such right to withdraw had been expressly negatived in the charter.

The 4th section of the new code declares that in the construction of all statutory enactments of this State, the ordinary signification shall be applied to all words, except words of art, &c. The ordinary signification of the word "franchise," as defined by Webster is, "A particular privilege or right granted by a prince or sovereign to an individual or a

number of persons; an exemption from a burden or duty to which others are subject." In a legal sense franchise and liberty are used as synonymous terms, and the kinds of them are various and almost infinite. (2d Bl., Com., 37). To "withdraw" is to take away what has been enjoyed; to take from. It may be conceded that the company,
72 under its charter of 1872 had, as one of its franchises granted to it by the State, the right to be exempted from the payment of a higher tax than one-half of one per cent. upon its annual net income; still, the State reserved the right (whether wisely or unwisely is not a question for the courts to decide) to withdraw the franchise whenever in their judgment the public interest required it, without impairing the obligation of her contract with the company, as prohibited by the constitution, for the reason that the company accepted the grant upon that condition; that was a part of the contract between the State and the company when it accepted the grant. (West End and Atlanta Street Railroad Co. vs. The Atlanta Street Railroad Co., 49th Geo. Rep., 151.)

The Supreme Court of the United States fully recognized these
73 general principles in Tomlinson vs. Jessup (15th Wallace Rep., 454); Miller vs. The State (Ibid., 478); Holyoke Company vs. Lyman (Ibid., 500).

In the case of Tomlinson vs. Brach (Ibid., 460), which was cited by the plaintiff in error, it was held by the court in that case that the act of the South Carolina legislature of 1843 authorizing the consolidation of two railroad companies withdrew the charter from the operation of the 41st section of the act of 1841 of that State providing for the repeal or modification of charters granted by the State, and therefore that case does not contravene the rulings of that court in the other cases cited.

This charter of the company would have continued for thirty years from the date of its grant, and the right of the State to withdraw any of the franchises granted by it to the company is not expressly
74 negatived in it. The reasons why the State did not negative her right to withdraw any of the franchises granted do not appear. The general assembly may have thought that, inasmuch as the Central Railroad & Banking Co. had enjoyed the exemption from taxation at a higher rate than one-half of one per cent. upon its net annual income for many years, and being then abundantly able to take care of itself, and by the consolidation of another company with it, thereby increasing its power and strength in the State for thirty years, that her interest required that she should reserve to herself the right to withdraw at least one of the franchises granted whenever, in her judgment, the public interest should demand it.

Whatever may have been the reasons which operated on the
75 minds of the legislature for reserving this right of the State in making the grant is not now a question for the courts to determine. Although the State did reserve the right in making the grant to withdraw the franchise, it is not to be presumed that she would exercise that right captiously or unjustly; and it is not apparent that she has done so. The State has only exercised her sovereign power of taxation by taxing the property of the company as the property of the whole people of the State is taxed, and not otherwise; and cannot tax it otherwise, under the provisions of the State constitution, if she was disposed to do so.

It was insisted on the argument by the plaintiffs in error, that inasmuch as this court had decided in the case of the Mechanics' Bank
76 vs. Heard, 37th Georgia Reports, 461, that a corporation could

not voluntarily surrender its franchises to the State without the assent of the legislature, that it might be compelled to continue after its most valuable franchises had been withdrawn. The charter in that case was granted prior to the adoption of the code of 1863. This court never has decided, and perhaps never will decide, that when the State withdraws any of the franchises granted to a corporation since the adoption of the code, that such corporation cannot voluntarily surrender its franchises to the State, as provided by the 1686 section thereof.

The Southwestern Railroad Company occupies a different position, in one respect, from that of Central Railroad & Banking Company. It appears from the evidence in the record that the act providing
77 for the union and consolidation of the Muscogee Railroad Company with the Southwestern Railroad Company, under the charter of the latter company, was passed in 1856, the 5th section of which declared that the act should not go into operation until there should be a vote of a majority of two-thirds of the stockholders of each company in favor the union and consolidation, and of the provisions of the act, which was not done until 1868, and the consolidation of the two roads did not take place until November, 1868. The act authorizing the consolidation of the two roads was not accepted by the stockholders thereof until 1868, and did not become a contract between the State and the Southwestern Railroad Company until that time, which was subsequent
78 to the adoption of the code in 1863. The contract was therefore consum'ated in view of the public law of the State as it existed at that time, and the exercise of the taxing power of the State, as provided by the act of February, 1874, did not impair the obligation of that contract, as provided by the constitution of the United States. What has been said in relation to the act consolidating the Macon & Western Railroad Company with the Central Railroad & Banking Company is also applicable to the act consolidating the Muscogee Railroad Company with the Southwestern Railroad Company.

The Augusta and Savannah Railroad Company was chartered by the general assembly of the State in 1838, before the adoption of the code of 1863. By the 13th section of its charter it is provided "that
79 said railroad, and the property of said company, shall not be subject to be taxed higher than one-half of one per cent. on its annual income." The defendant alleged in its affidavit of illegality to the execution issued against it by the State, reciting the exemption in its charter, that the act of 1874, under the provision of which the execution against its property was issued, was unconstitutional & void, because it impaired the obligation of its contract made with the State, on the statements of facts contained in the record.

The counsel for the State demurred generally to the defendant's affidavit of illegality, which demurrer was overruled by the court and the affidavit of illegality sustained.

When the State made the grant to the defendant contained
80 in its charter, and the same was accepted, it became an executed contract between the State and the defendant, and the State, under the law as it then existed, could not impair its obligation by withdrawing the franchise granted, as she attempted to do by the passage of the act of 1874, and so far as said act was applicable to the defendant's franchise as specified in the grant exempting its railroad and property from a higher rate of taxation than one-half of one per cent., it did impair the obligation of the contract, and, as to that contract, was unconstitutional & void, the State not having reserved the right to withdraw the franchise granted at the time the grant was accepted by the company.

After a careful examination of the questions made in the record, the conclusion is—

81 1. That the act of the 24th August, 1872, consolidated the two railroad companies under the name and charter of the Central Railroad & Banking Co. of Georgia, created a new corporation for the specific purposes as therein declared; and as no time was specified in the act for its continuance, it would not expire under the general law of the State until the end of the thirty years from date of the act.

2. The fact that all the rights, privileges, immunities, & franchises of the Central Railroad & Banking Co., as specified in its old charter, were conferred by the act of 1872 upon the new company, those rights, privileges, immunities, & franchises were granted by the act to the new company in the same manner, and have the same legal effect as if the

82 same had been specifically enumerated in the body of the new act, and when accepted by the new company were accepted in view of the provision of the 1682d section of the code, and therefore the State reserved the right to withdraw the franchise as to the exemption from taxation, as she has done, and such withdrawal did not impair the obligation of her contract with the company, as prohibited by the Constitution of the United States, and the same principles are applicable to the Southwestern Railroad Company.

Third. The Augusta & Savannah Railroad Company, standing upon its original charter as it was granted & accepted prior the adoption of the code of 1863, the State could not, by the act of 1874, withdraw any of the franchises granted to that company without impairing the obligation of her contract with it, she not having reserved the

83 right to do so when the contract was made. The 1682d section of the code of 1863, not being a part of the public law of the State at that time, did not enter into & constitute any part of the contract between the State and that company.

Let the judgment of the court below in the three cases mentioned in this opinion be affirmed.

84 CLERK'S OFFICE, SUPREME COURT OF GA.
Atlanta, Ga, Feby 1st, 1876.

I, Z. D. Harrison, clerk of the supreme court of Georgia, and keeper of the records thereof, hereby certify that the foregoing pages hereto attached contain the original writ of error to said court and the original citation, together with a copy of the petition for writ of error and a copy of the bond for supersedeas on writ of error, in the case of The Atlantic & Gulf Railroad Company, pl'ff in error, vs. The State of Ga, def't in error; and also full, true, and complete copies of the original bill of exceptions, of the transcript of the record, and of the judgment and opinion of the supreme court of Georgia in said case, together with a true & complete copy of the opinion of the said supreme court in the case of The Central Railroad & Banking Company vs. The State of Ga, which said last-mentioned opinion is the opinion referred to by the said court in the opinion first above mentioned, all of which appears from the records of file in this office.

Witness my signature & the seal of said court affixed the day & year above written.

[SEAL.] Z. D. HARRISON,
Clk S. C. Ga.

(Indorsement on cover:) No. 367. The Atlantic and Gulf Railroad Company, plaintiff in error, vs. The State of Georgia. Georgia sup. court. Filed 27th March, 1876.